

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2008-0670-PST-E TCEQ ID: RN102358686 CASE NO.: 35773
RESPONDENT NAME: Petroleum Wholesale, L.P. dba Sunmart 476

Page 1 of 2

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: Sunmart 476, 1214 North Sam Houston Parkway East, Houston, Harris County</p> <p>TYPE OF OPERATION: Convenience store with retail sales of gasoline</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on September 29, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST:</p> <p style="margin-left: 20px;">TCEQ Attorney/SEP Coordinator: None</p> <p style="margin-left: 20px;">TCEQ Enforcement Coordinator: Ms. Elvia Maske, Enforcement Division, Enforcement Team 6, MC 128, (512) 239-0789; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171</p> <p style="margin-left: 20px;">Respondent: Mr. Chris Smith, Environmental Manager, Petroleum Wholesale, L.P. dba Sunmart 476, P.O. Box 4456, Houston, Texas 77210</p> <p style="margin-left: 20px;">Mr. Stuart W. Lapp, Registered Agent, Petroleum Wholesale, L.P. dba Sunmart 476, 3648 Farm-to-Market Road 1960 West, Suite 200, Houston, Texas 77068</p> <p style="margin-left: 20px;">Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: March 4, 2008</p> <p>Date of NOE Relating to this Case: March 10, 2008 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WASTE</p> <p>1) Failure to maintain the Stage II vapor recovery system ("VRS") in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resources Board Executive Order, and free of defects that would impair the effectiveness of the system. Specifically, the dynamic pressure test indicated a blockage in the system [30 TEX. ADMIN. CODE § 115.242(3) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>2) Failure to verify proper operation of the Stage II equipment at least once every 12 months, and vapor space manifold and dynamic back pressure at least once every 36 months or upon major system replacement or modification, whichever occurs first. Specifically, the Stage II annual and triennial system compliance testing had not been conducted [30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p>	<p>Total Assessed: \$5,816</p> <p>Total Deferred: \$1,163 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$4,653</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a) Within 30 days after the effective date of this Agreed Order:</p> <p>i. Begin maintaining the Stage II VRS in proper operating condition, including but not limited to clearing the blockage in the system; and</p> <p>ii. Conduct the required annual and triennial testing of the Stage II equipment.</p> <p>b) Within 45 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions a.i. and a.ii.</p>

Additional ID No(s): PST Facility ID No. 45458



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision March 8, 2008

TCEQ

DATES	Assigned	14-Apr-2008	Screening	17-Apr-2008	EPA Due	
	PCW	21-Apr-2008				

RESPONDENT/FACILITY INFORMATION

Respondent	Petroleum Wholesale, L.P. dba Sunmart 476		
Reg. Ent. Ref. No.	RN102358686		
Facility/Site Region	12-Houston	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	35773	No. of Violations	2
Docket No.	2008-0670-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Elvia Maske
Multi-Media		EC's Team	Enforcement Team 6
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) Subtotal 1 \$3,500

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History 32% Enhancement Subtotals 2, 3, & 7 \$1,120

Notes Enhancement due to two NOV's with same or similar violations, one NOV with dissimilar violations and one 1660 order.

Culpability No 0% Enhancement Subtotal 4 \$0

Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply 0% Reduction Subtotal 5 \$0

Before NOV NOV to EDRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes The Respondent does not meet the good faith criteria.

Total EB Amounts \$1,215 0% Enhancement* Subtotal 6 \$0
Approx. Cost of Compliance \$1,500 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 Final Subtotal \$4,620

OTHER FACTORS AS JUSTICE MAY REQUIRE 26% Adjustment \$1,196

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes Recommended enhancement to capture the avoided cost of compliance associated with Violation No. 2.

Final Penalty Amount \$5,816

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty \$5,816

DEFERRAL 20% Reduction Adjustment -\$1,163

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes Deferral offered for expedited settlement.

PAYABLE PENALTY \$4,653

Screening Date 17-Apr-2008

Docket No. 2008-0670-PST-E

PCW

Respondent Petroleum Wholesale, L.P. dba Sunmart 476

Policy Revision 2 (September 2002)

Case ID No. 35773

PCW Revision March 8, 2008

Reg. Ent. Reference No. RN102358686

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Elvia Maske

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	2	10%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 32%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement due to two NOVs with same or similar violations, one NOV with dissimilar violations and one 1660 order.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 32%

Screening Date 17-Apr-2008 Docket No. 2008-0670-PST-E PCW
Respondent Petroleum Wholesale, L.P. dba Sunmart 476
Case ID No. 35773 Policy Revision 2 (September 2002)
Reg. Ent. Reference No. RN102358686 PCW Revision March 8, 2008

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Elvia Maske

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 115.242(3) and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resources Board Executive Order, and free of defects that would impair the effectiveness of the system. Specifically, the dynamic pressure test indicated a blockage in the system.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				10%
	Potential		x		

>> Programmatic Matrix

Matrix Notes	Falsification				Percent
		Major	Moderate	Minor	
					0%

Human health or the environment could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 44 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	x
	semiannual	
	annual	
	single event	

Violation Base Penalty \$1,000

One quarterly event is recommended from the March 4, 2008 investigation date to the April 17, 2008 screening date.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$19

Violation Final Penalty Total \$1,662

This violation Final Assessed Penalty (adjusted for limits) \$1,662

Economic Benefit Worksheet

Respondent Petroleum Wholesale, L.P. dba Sunmart 476

Case ID No. 35773

Reg. Ent. Reference No. RN102358686

Media Petroleum Storage Tank

Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost No commas or \$	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$500	4-Mar-2008	1-Dec-2008	0.7	\$19	n/a	\$19

Notes for DELAYED costs

Estimated cost to repair defective Stage II vapor recovery system components. The date required is the date of the investigation and the final date is the expected date of compliance.

Avoided Costs

ANNUALIZE: [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$19

Screening Date 17-Apr-2008

Docket No. 2008-0670-PST-E

PCW

Respondent Petroleum Wholesale, L.P. dba Sunmart 476

Policy Revision 2 (September 2002)

Case ID No. 35773

PCW Revision March 8, 2008

Reg. Ent. Reference No. RN102358686

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Elvia Maske

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 115.245(2) and Tex. Health & Safety Code § 382.085(b)

Violation Description

Failed to verify proper operation of the Stage II equipment at least once every 12 months, and vapor space manifold and dynamic back pressure at least once every 36 months or upon major system replacement or modification, whichever occurs first. Specifically, the Stage II annual and triennial system compliance testing had not been conducted.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

>> Programmatic Matrix

Falsification			
	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1

1140 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty \$2,500

One single event is recommended for the three-year period preceding the March 4, 2008 investigation.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1,196

Violation Final Penalty Total \$4,154

This violation Final Assessed Penalty (adjusted for limits) \$4,154

Economic Benefit Worksheet

Respondent Petroleum Wholesale, L.P. dba Sunmart 476

Case ID No. 35773

Reg. Ent. Reference No. RN102358686

Media Petroleum Storage Tank

Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$1,000	4-Mar-2005	4-Mar-2008	3.9	\$196	\$1,000	\$1,196
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to conduct the required Stage II testing. The date required is three years prior to the investigation and the final date is the investigation date.

Approx. Cost of Compliance

\$1,000

TOTAL

\$1,196

Compliance History

Customer/Respondent/Owner-Operator:	CN601542616	Petroleum Wholesale, L.P.	Classification: AVERAGE	Rating: 2.47
Regulated Entity:	RN102358686	SUNMART 476	Classification: AVERAGE	Site Rating: 8.57
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	45458	
Location:	1214 N SAM HOUSTON PKWY E, HOUSTON, TX, 77032	Rating Date: September 01 07	Repeat Violator: NO	
TCEQ Region:	REGION 12 - HOUSTON			
Date Compliance History Prepared:	April 21, 2008			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	April 21, 2003 to April 21, 2008			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Elvia Maske	Phone:	(512) 239-0789	

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period?	Yes
2. Has there been a (known) change in ownership of the site during the compliance period?	Yes
3. If Yes, who is the current owner?	Petroleum Wholesale, L.P.
4. If Yes, who was/were the prior owner(s)?	DIAMOND SHAMROCK REFINING Chahal Investment Inc.
5. When did the change(s) in ownership occur?	04/03/2007

Components (Multimedia) for the Site :

A.	Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
	Effective Date: 10/10/2005 ADMINORDER 2005-0344-PST-E
	Classification: Moderate
	Citation: 30 TAC Chapter 37, SubChapter I 37.815(a) 30 TAC Chapter 37, SubChapter I 37.815(b)
	Description: A financial assurance mechanism was not received.

B.	Any criminal convictions of the state of Texas and the federal government.
	N/A

C.	Chronic excessive emissions events.
	N/A

D.	The approval dates of investigations. (CCEDS Inv. Track. No.)
	1 10/20/2003 (278285)
	2 01/20/2005 (292523)
	3 01/07/2007 (535076)
	4 08/27/2007 (571918)
	5 08/27/2007 (572681)
	6 03/10/2008 (638436)

E.	Written notices of violations (NOV). (CCEDS Inv. Track. No.)
	Date: 10/20/2003 (278285)
	Self Report? NO Classification: Moderate
	Citation: 30 TAC Chapter 37, SubChapter I 37.815(a) 30 TAC Chapter 37, SubChapter I 37.815(b)
	Description: Failure to provide acceptable financial assurance.
	Date: 01/07/2007 (535076)
	Self Report? NO Classification: Moderate
	Citation: 30 TAC Chapter 115, SubChapter C 115.245(2)
	Description: Tex. Admin. Code Section 115.245 (2)- Failure to verify proper operation of the Stage II equipment at least once every twelve months or upon major system replacement or modification, whichever occurs first. The verification shall include

all functional tests that were required for the initial-system test, except for TX

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)
Description: 30 Tex. Admin. Code Section 115.242 (3) - Failure to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable CARB Executive Order(s), and free of defects that would impair the effectiveness of the system.

Date: 08/27/2007 (572681)

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)
Description: 30 Tex. Admin. Code Section 115.242 (3) - Failure to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable CARB Executive Order(s), and free of defects that would impair the effectiveness of the system.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 115, SubChapter C 115.245(2)
Description: Tex. Admin. Code Section 115.245 (2)- Failure to verify proper operation of the Stage II equipment at least once every twelve months or upon major system replacement or modification, whichever occurs first. The verification shall include all functional tests that were required for the initial system test, except for TXP-101, Determination of Vapor Space Manifold of Vapor Recovery Systems at Gasoline Dispensing Facilities, and TXP- 103, Determination of Dynamic Pressure Performance (Dynamic Ba

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
PETROLEUM WHOLESALE, L.P.
DBA SUNMART 476
RN102358686

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BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY

AGREED ORDER DOCKET NO. 2008-0670-PST-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Petroleum Wholesale, L.P. dba Sunmart 476 ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a convenience store with retail sales of gasoline at 1214 North Sam Houston Parkway East in Houston, Harris County, Texas (the "Station").
2. The Station consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about March 15, 2008.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Five Thousand Eight Hundred Sixteen Dollars (\$5,816) is assessed by the Commission in settlement of the violations alleged in Section II

("Allegations"). The Respondent has paid Four Thousand Six Hundred Fifty-Three Dollars (\$4,653) of the administrative penalty and One Thousand One Hundred Sixty-Three Dollars (\$1,163) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Station, the Respondent is alleged to have:

1. Failed to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resources Board Executive Order, and free of defects that would impair the effectiveness of the system, in violation of 30 TEX. ADMIN. CODE § 115.242(3) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on March 4, 2008. Specifically, the dynamic pressure test indicated a blockage in the system.
2. Failed to verify proper operation of the Stage II equipment at least once every 12 months, and vapor space manifolding and dynamic back pressure at least once every 36 months or upon major system replacement or modification, whichever occurs first, in violation of 30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on March 4, 2008. Specifically, the Stage II annual and triennial system compliance testing had not been conducted.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Petroleum Wholesale, L.P. dba Sunmart 476, Docket No. 2008-0670-PST-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. It is further ordered that the Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order:
 - i. Begin maintaining the Stage II vapor recovery system in proper operating condition, including but not limited to clearing the blockage in the system, in accordance with 30 TEX. ADMIN. CODE § 115.242; and
 - ii. Conduct the required annual and triennial testing of the Stage II equipment, in accordance with 30 TEX. ADMIN. CODE § 115.245.
 - b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a.i. and 2.a.ii. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Waste Section Manager
Houston Regional Office
Texas Commission on Environmental Quality
5425 Polk Avenue, Suite H
Houston, Texas 77023-1486

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Station operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John S. Miller
For the Executive Director

9/26/2008
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

Chris Smith
Signature

07/16/08
Date

CHRIS SMITH
Name (Printed or typed)
Authorized Representative of
Petroleum Wholesale, L.P. dba Sunmart 476

ENVIRONMENTAL MANAGER
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

